

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

## MEMORANDUM ORDER OF COURT

Pending before the Court is an appeal of the April 13, 2010 order of the Bankruptcy Court filed by Appellant Chet Duffy, the majority shareholder of Debtor Ceda Mills, Inc. (“Ceda Mills”).<sup>1</sup> *See* Doc. No. 1. On April 27, 2010, Appellant Duffy filed a notice of appeal with the Bankruptcy Court pursuant to 28 U.S.C. § 158. On May 11, 2010, Appellant Duffy filed his designation of the contents of the record on appeal and a statement of the issues on appeal. Doc. No. 600 at Bankruptcy No. 04-24452-JAD.

Bankruptcy Rule 8013 provides that the district court “may affirm, modify, or reverse a bankruptcy judge’s judgment, order, or decree or remand with instructions for further proceedings.” Fed. R. Bankr. P. 8013. Bankruptcy Rule 8002 provides that notice of appeal must be filed within fourteen days “of the date of the entry of judgment, order, or decree appealed from.” Fed. R. Bankr. P. 8002(a). Rule 8002 is jurisdictional in nature, and therefore, “[t]he failure to file a timely notice of appeal [from a Bankruptcy Court order] creates a

<sup>1</sup> Appellant Duffy owns 83 % of the shares of Ceda Mills. The remaining 17 % of the shares are owned by four other shareholders, collectively referred to as the minority shareholders.

jurisdictional defect barring appellate review.” *Taylor v. Taylor (In re Taylor)*, 343 Fed. Appx. 753, 755 n. 1 (3d Cir. Sept.2, 2009) (citing *Shareholders v. Sound Radio, Inc.*, 109 F.3d 873, 879 (3d Cir.1997)) (internal quotations omitted). *But see Bowles v. Russell*, 551 U.S. 205, 209-13, 127 S.Ct. 2360, 168 L.Ed.2d 96 (2007); *Eberhart v. United States*, 546 U.S. 12, 15-17, 126 S.Ct. 403, 163 L.Ed.2d 14 (2005); *Kontrick v. Ryan*, 540 U.S. 443, 452-56, 124 S.Ct. 906, 157 L.Ed.2d 867 (2004).

As the parties are familiar with the factual and procedural background of this matter, an extensive review of the history is not necessary. The Court begins by noting two previous appeals of Debtor Ceda Mills, Inc. (“Ceda Mills”) to this Court, filed at civil action numbers 2:09-cv-00181 and 2:10-cv-599, both which involved the same issues now appealed by Appellant Duffy. More specifically, both appeals sought relief from a legal obligation ordered by the Bankruptcy Court on September 19, 2008, for Debtor Ceda Mills to provide the minority shareholders and the Bankruptcy Court itself with a full accounting and to further provide an opportunity for the minority shareholders to be paid their ratable share of the surplus funds recovered in light of the fact this was a liquidating Chapter 11 bankruptcy that resulted in enough funds to pay creditors in full and to pay a sizable distribution to equity holders, coupled with the fact that Debtor Ceda Mills had been paying Appellant Duffy and his relatives without remitting any distributions to minority shareholders. Debtor Ceda Mills’ two previous efforts to appeal this order and seek relief from this obligation was dismissed as untimely on September 4, 2009 (in the appeal at civil action number 2:09-cv-00181), and on September 8, 2010 (in the appeal at civil action number 2:10-cv-599).

Similarly, the Court finds that the relief sought by Appellant Duffy herein is actually

relief from the original order of the Bankruptcy Court dated September 19, 2008. While being cast as an appeal of the order of the Bankruptcy Court dated April 13, 2010, that order simply required Debtor Ceda Mills to abide by the order dated September 19, 2008. As such, for the reasons articulated by the Court in the two previous appeals by Debtor Ceda Mills in the above captioned actions, Appellant's Duffy's appeal is **DISMISSED** as untimely.

SO ORDERED, this 8<sup>th</sup> day of September 2010.

BY THE COURT:

s/ Terrence F. McVerry  
United States District Court Judge

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